IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 33720 of 2007(L)

ID.24/2005 of INDUSTRIAL TRIBUNAL, PALAKKAD

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PETITIONER:

THE PRESIDENT, CHIYYARAM CONSUMER
CO-OPERATIVE STORE LTD. NO.390,
CHIYYARAM (P.O), THRISSUR.

BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI
SRI.S.S.HUSSAIN
SRI.P.K.NIJOY

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, LABOUR DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE INDUSTRIAL TRIBUNAL, PALAKKAD.

3. T.A.JOSE, THATTIL HOUSE, SEVANA NAGAR,
CHIYYARAM (P.O), THRISSUR.

BY GOVT. PLEADER, SRI.A.J.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C) No. 33720 of 2007(L)

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Dated this the 15th day of November, 2007

JUDGMENT

The petitioner-management in ID No.24/05 on the files of the Industrial Tribunal, Palakkad is challenging Ext.P8 award passed by the Tribunal in that ID. Issue referred for adjudication in the I.D. was:

> "Whether the dismissal of Shri.T.A.Jose, Salesman, Chiyyaram Consumer Co-operative Store Limited No.390 Chiyyaram, from 13.2.2003 is justifiable? If not to what relief he is entitled to?"

2. Since the dismissal of workman was pursuant to a domestic enquiry, Industrial Tribunal considered the validity of the enquiry as a preliminary point and held that the enquiry was invalid. The petitioner filed an application seeking opportunity for proving the misconduct against the workman involved. The Industrial Tribunal, relying on the decision of this Court in **Edayar K.S.S. v. Industrial Tribunal** (2007(2) KLT 613) stated that since the petitioner had asked for such an opportunity to in

the written statement itself, such an opportunity cannot be given. The contention raised by the petitioner is that in the award, there is a further finding that the enquiry is being set aside only on a technical ground and therefore the Tribunal ought not to have directed reinstatement of workman with Rs.40,000/- as backwages. According to the petitioner, since dismissal was based on a serious misconduct, including misappropriation of funds, the Industrial Tribunal ought not to have directed reinstatement with Rs.40,000/- as backwages.

2. In the writ petition the petitioner has not raised any grounds against the preliminary order holding that the enquiry is invalid. The Industrial Tribunal set aside the enquiry on the ground that the workman was not given subsistence allowance, in spite of specific request made in this behalf. The Tribunal found that the workman had made a specific representation before the enquiry officer to postpone the enquiry till subsistence allowance is paid. This was not allowed by the enquiry officer and he proceeded to conduct the enquiry in the absence of the workman. It is settled law that if subsistence allowance is not paid to the

workman without any sufficient reasons enquiry conducted without subsistence allowance would be vitiated. Here the workman has specifically requested for payment of subsistence allowance. The non-payment would have certainly prejudiced the defence of the workman in the enquiry. In this writ petition the petitioner has not raised any contention that there were sufficient reasons for not paying subsistence allowance and that the workman was not in any way prejudiced because of non-payment of subsistence allowance. That being so, I do not find any infirmity in the finding of the Industrial Tribunal that the enquiry is in violation of principles of natural justice.

3. Next question is whether the petitioner is entitled to an opportunity to adduce fresh evidence to prove the misconduct against the workman. Admittedly the petitioner had not sought for opportunity to adduce fresh evidence in the event of the enquiry being found invalid, in the written statement filed. This Court has in **Edayar K.S.S. v. Industrial Tribunal** (2002 (2) KLT 613) relying on the Constitution Bench decision of the Supreme Court, held that the management has to seek

opportunity to lead fresh/additional evidence at the first available opportunity which is in the written statement itself. In this case the petitioner had not sought for such opportunity in the written statement. Therefore, I do not find any merit in the contention against the order dismissing the application for permission to adduce fresh evidence. I also find that the Industrial Tribunal had ordered only Rs.40,000/- as backwages. In the above circumstances, I do not find any merit in the writ petition. Accordingly the same is dismissed.

Sd/-
S.SIRI JAGAN,
JUDGE

JP